



7533-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 800

[Docket No. NTSB-GC-2012-0002]

RIN 3147-AA03

Organization and Functions of the Board and Delegations of Authority

AGENCY: National Transportation Safety Board (NTSB or Board).

ACTION: Final rule.

SUMMARY: By this Final Rule, the NTSB adds a new subpart to a part which contains internal rules specific to the NTSB. In publishing a Notice of Proposed Rulemaking (NPRM) in June 2015, the NTSB proposed a new subpart to outline the NTSB's rulemaking procedures.

DATES: The revisions and additions published in this Final Rule will become effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION** IN THE FEDERAL REGISTER].

ADDRESSES: A copy of the Final Rule, published in the *Federal Register* (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW, Washington, D.C. 20594-2003. Alternatively, a copy of the NPRM

is available on the government-wide website on regulations at <http://www.regulations.gov> (Docket ID Number NTSB-GC-2012-0002).

FOR FURTHER INFORMATION CONTACT: David Tochen, General Counsel, (202) 314-6080.

SUPPLEMENTARY INFORMATION:

I. Notice of Proposed Rulemaking

The NTSB issued this NPRM in accordance with its June 25, 2012 document indicating the agency's intent to undertake a review of all NTSB regulations to ensure they are updated. 77 FR 37865. The NTSB initiated this review in accordance with Executive Order 13579, "Regulation and Independent Regulatory Agencies" (76 FR 41587, July 14, 2011). The purpose of Executive Order 13579 is to ensure all agencies adhere to the key principles found in Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011), which include promoting public participation in rulemaking, improving integration and innovation, promoting flexibility and freedom of choice, and ensuring scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The NTSB explained in its June 25, 2012 document that it is committed to ensuring its regulations remain updated and comply with these principles. The NTSB published an additional

document in the *Federal Register* on January 8, 2013, describing the NTSB's plan for updating all regulations. 78 FR 1193.

Consistent with Executive Order 13563 and in accordance with these two documents published in the *Federal Register*, the NTSB seeks to ensure the public is aware of its rulemaking procedures.

On June 18, 2015, the NTSB published an NPRM inviting public comments concerning the NTSB's addition of a new subpart within 49 CFR part 800, to outline procedures for the adoption of rules, as well as the rulemaking process in general. 80 FR 34874. As the NTSB stated in its NPRM, many of the new sections we proposed are self-explanatory.

The NTSB divided its discussion of the proposed additions into five segments, the first of which described general rulemaking provisions (§§ 800.30-800.34), which included proposed rules describing the applicability of proposed new subpart C (Procedures for Adoption of Rules), the NTSB's public reading room (§ 800.31), the act of initiating the rulemaking process (§ 800.32), as well as notices of proposed rulemaking and the contents thereof (§§ 800.33 and 800.34).

The NTSB also categorized three proposed rules into a segment it described as "public participation" (§§ 800.35-800.38). These proposed rules addressed participation of interested persons in the NTSB rulemaking process, which include

submitting comments; petitions for extension of time to comment; the contents of written comments; and the NTSB's process for considering the comments it receives in response to a publication requesting comments.

The NTSB described proposed §§ 800.39-800.41 within a segment titled "proceedings and documents." These proposed sections described procedures for additional rulemaking proceedings, hearings, and the agency's process for adopting final rules.

Finally, the NTSB organized its preamble description of the remaining sections into segments titled "petitions for rulemaking" (§§ 800.42-800.43), which described the procedure for submitting a petition for rulemaking, as well as the agency's processing of such petitions; and "Direct and Interim Final Rules" (§§ 800.44-800.45), which proposed to implement procedures for promulgating rules that are immediately effective in certain circumstances.

As the NTSB stated in its NPRM, the agency reviewed other agencies' rules describing rulemaking procedures, and utilized such rules as a model for the proposed new subpart.

II. Comment Received and Response Thereto

The NTSB received one comment in response to the June 18, 2015 NPRM, from the Air Line Pilots Association, International (ALPA). The comment contained two suggestions, which the NTSB

has considered carefully. First, ALPA recommends the NTSB utilize the direct final rulemaking (DFR) procedure for all its rulemaking projects. Second, ALPA suggests the NTSB alter its proposed language in § 800.37 ("Contents of written comments"), in which we proposed, among other requirements, that comments be limited to 15 pages in length. ALPA recommends we amend the page limit to be 15 pages unless the NPRM itself exceeds 15 pages, in which case we should increase the page limit to equal the number of pages of the NPRM.

A. Section 800.33, "Notice of proposed rulemaking."

The NTSB appreciates ALPA's feedback concerning the option of utilizing the DFR procedure for NTSB rulemakings. The comment was succinct, in that it did not provide examples of situations in which the organization believes the NTSB might use the DFR procedure in lieu of publishing an NPRM and inviting comments from the public. The comment states, "While ALPA understands that the Administrative Procedures Act does allow for this procedure, ALPA believes that it would be in the NTSB, stakeholders, and public interest to issue such rulemaking in accordance with the direct final rulemaking procedures." The NTSB assumes that ALPA desires the agency engage in more expeditious rulemaking procedures, thereby saving time and agency resources.

However, the NTSB declines to remove § 800.33, because DFR procedures are only available under the Administrative Procedure Act in limited circumstances. In particular, agencies only use DFR procedures when they do not anticipate a proposed rule or change will be controversial or will generate public interest.

While the NTSB does not promulgate rules that are considered "major" under Executive Order 12866, "Regulatory Planning and Review," the agency nevertheless issues regulations about which transportation entities and members of the public maintain an interest and intend to offer comments. For example, in response to the NTSB's recent NPRM proposing the reorganization of and several changes to its rules on investigation procedures (49 CFR part 831), the agency received over three dozen substantive comments from a variety of stakeholders. See 79 FR 47064 (Aug. 12, 2014); www.regulations.gov Docket NTSB-GC-2012-0002. These proposed changes did not meet the criteria to be considered a "major rule" or a rule that would have a significant economic impact on a substantial number of small entities; nevertheless, the NPRM generated interest from a wide array of interested persons, organizations, and agencies. The NTSB could not consider promulgating such rulemaking changes in any manner other than publishing an NPRM and carefully considering all comments the agency received in response to it. Overall, while the NTSB

appreciates ALPA's idea concerning exclusive utilization of the DFR process, the agency nevertheless finalizes its proposed new subpart, including § 800.33 ("Notice of proposed rulemaking"), in this Final Rule.

B. Section 800.37, "Contents of written comments."

The NTSB also appreciates ALPA's suggestion concerning the increase of the page limit applicable to comments from the public. While the NTSB believes a limit of 15 pages is sufficient for almost all rulemaking responses, the agency also acknowledges the public may find the page limit to be insufficient. Nevertheless, the NTSB finalizes the text of § 800.37, because the text includes language indicating the NTSB may choose to waive the page limit in certain circumstances. The agency will seriously consider such a waiver when it proposes regulatory changes in an NPRM that is particularly lengthy or complex.

III. *Regulatory Analyses*

In the NPRM, the NTSB included a regulatory analyses section concerning various Executive Orders and statutory provisions. The NTSB did not receive any comments concerning the results of these analyses. The NTSB again notes the following concerning such Executive Orders and statutory provisions.

This Final Rule is not a significant regulatory action under Executive Order 12866. Therefore, Executive Order 12866

does not require a Regulatory Assessment. As such, the Office of Management and Budget (OMB) has not reviewed this proposed rule under Executive Order 12866. In addition, section 2(a) of Executive Order 13579 states:

Independent regulatory agencies "should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."

76 FR at 41587. Consistent with Executive Order 13579, the NTSB's amendments to 49 CFR part 800 reflect its judgment that this part should be updated and streamlined.

This rule does not require an analysis under the Unfunded Mandates Reform Act, 2 United States Code (U.S.C.) 1501-1571, or the National Environmental Policy Act, 42 U.S.C. 4321-4347.

The NTSB has also analyzed these amendments in accordance with the principles and criteria contained in Executive Order 13132, "Federalism." Any rulemaking proposal resulting from this notice would not propose any regulations that would: (1) have a substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on state and local governments; or (3) preempt state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The NTSB is also aware that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires each agency to review its rulemaking to assess the potential impact on small entities, unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. The NTSB certifies this final rule will not have a significant economic impact on a substantial number of small entities.

Regarding other Executive Orders and statutory provisions, this final rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform," to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"; Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks"; Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments"; Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded this

rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements.

List of Subjects in 49 CFR Part 800

Administrative practice and procedure, Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies).

For the reasons discussed in the preamble, the NTSB amends 49 CFR part 800 as follows:

Part 800 -- Administrative Rules

1. Revise the authority citation for 49 CFR part 800 to read as follows:

Authority: 49 U.S.C. 1113(f), unless otherwise noted.

2. Revise the heading for part 800 to read as set forth above.

3. Add subpart C to 49 CFR part 800 to read as follows:

Subpart C -- Procedures for Adoption of Rules

Sec.

800.30 Applicability.

800.31 Public reading room.

800.32 Initiation of rulemaking.

800.33 Notice of proposed rulemaking.

800.34 Contents of notices of proposed rulemaking.

800.35 Participation of interested persons.

800.36 Petitions for extension of time to comment.

800.37 Contents of written comments.

800.38 Consideration of comments received.

800.39 Additional rulemaking proceedings.

800.40 Hearings.

800.41 Adoption of final rules.

800.42 Petitions for rulemaking.

800.43 Processing of petition.

800.44 Direct final rulemaking procedures.

800.45 Interim rulemaking procedures.

Subpart C -- Procedures for Adoption of Rules

§ 800.30 Applicability.

This subpart prescribes rulemaking procedures that apply to the issuance, amendment, and revocation of rules pursuant to 49 U.S.C. 1101-1155.

§ 800.31 Public reading room.

Information and data deemed relevant by the NTSB relating to rulemaking actions, including notices of proposed rulemaking; comments received in response to notices; petitions for rulemaking and reconsideration; denials of petitions for rulemaking; and final rules are maintained in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594-2003.

§ 800.32 Initiation of rulemaking.

The NTSB may initiate rulemaking either on its own motion or on petition by any interested person after a determination that grant of the petition is advisable. The NTSB may also consider the recommendations of other agencies of the United States.

§ 800.33 Notice of proposed rulemaking.

Unless the NTSB, for good cause, finds notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, a notice of proposed rulemaking is issued and interested persons are invited to participate in the rulemaking proceedings under applicable provisions of 5 U.S.C. 551.

§ 800.34 Contents of notices of proposed rulemaking.

(a) Each notice of proposed rulemaking is published in the Federal Register.

(b) Each notice includes:

- (1) A statement of the time, place, and nature of the proposed rulemaking proceeding;
- (2) A reference to the authority under which it is issued;
- (3) A description of the subjects and issues involved or the substance and terms of the proposed rule;
- (4) A statement of the time within which written comments must be submitted; and

(5) A statement of how and to what extent interested persons may participate in the proceedings.

§ 800.35 Participation of interested persons.

(a) Any interested person may participate in rulemaking proceeding by submitting comments in writing containing information, views or arguments.

(b) In its discretion, the agency may invite any interested person to participate in the rulemaking procedures described in this subpart.

§ 800.36 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received not later than 10 days before the end of the comment period stated in the notice. The petition must be submitted to: General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594-2003. The filing of the petition does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and the NTSB will publish a notice of the extension of the comment period in the Federal Register.

§ 800.37 Contents of written comments.

All written comments shall be in English. Unless otherwise specified in a notice requesting comments, comments may not

exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. Any commenter shall submit as a part of his or her written comments all material he or she considers relevant to any statement of fact made in the comment. Commenters should avoid incorporation by reference. However, if incorporation by reference is necessary, the incorporated material shall be identified with respect to document and page. The NTSB may reject comments if they are frivolous, abusive, or repetitious. The NTSB may also reject comments filed electronically if the commenter does not adhere to the electronic filing instructions at the Federal Docket Management System Web site.

§ 800.38 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered to the extent practicable.

§ 800.39 Additional rulemaking proceedings.

The NTSB may initiate any further rulemaking proceedings it finds necessary or desirable. For example, interested persons may be invited to make oral arguments, to participate in conferences between the Board or a representative of the Board and interested persons at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Board, at which a transcript or minutes are

kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

§ 800.40 Hearings.

(a) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this part. Unless otherwise specified, hearings held under this part are informal, fact-finding proceedings, at which there are no formal pleadings or adverse parties. Any rule issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The NTSB designates a representative to conduct any hearing held under this part. The General Counsel or a designated member of his or her staff may serve as legal officer at the hearing.

§ 800.41 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the General Counsel. The rule is then submitted to the Board for its consideration. If the Board adopts the rule, it is published in the Federal Register unless all persons subject to it are named and are personally served with a copy of it.

§ 800.42 Petitions for rulemaking.

(a) Any interested person may petition the Chairman to establish, amend, or repeal a rule.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Chairman, National Transportation Safety Board, 490 L'Enfant Plaza SW, Washington, DC 20594-0003;

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested; and

(4) Contain any information and arguments available to the petitioner to support the action sought.

§ 800.43 Processing of petition.

(a) Unless the NTSB otherwise specifies, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the agency determines the petition contains adequate justification, it initiates rule making action this subpart.

(c) *Denials.* If the agency determines the petition does not justify rulemaking, it denies the petition.

(d) *Notification.* Whenever the agency determines a petition should be granted or denied, the Office of the General Counsel prepares a notice of the grant or denial for issuance to the petitioner, and the agency issues it to the petitioner.

§ 800.44 Direct final rulemaking procedures.

A direct final rule makes regulatory changes and states those changes will take effect on a specified date unless the NTSB receives an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule published in the Federal Register.

(a) *Types of actions appropriate for direct final rulemaking.*

Rules the Board determines to be non-controversial and unlikely to result in adverse public comments may be published in the final rule section of the Federal Register as direct final rules. These include non-controversial rules that:

- (1) Make non-substantive clarifications or corrections to existing rules;
- (2) Incorporate by reference the latest or otherwise updated versions of technical or industry standards;
- (3) Affect internal NTSB procedures;
- (4) Update existing forms; and
- (5) Make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary.

(b) *Adverse comment.* An adverse comment is a comment the NTSB judges to be critical of the rule, to suggest the rule should not be adopted, or to suggest a change should be made to the

rule. Under the direct final rule process, the NTSB does not consider the following types of comments to be adverse:

(1) Comments recommending another rule change, unless the commenter states the direct final rule will be ineffective without the change;

(2) Comments outside the scope of the rule and comments suggesting the rule's policy or requirements should or should not be extended to other topics outside the scope of the rule;

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.* The NTSB will publish a confirmation rule document in the Federal Register if it has not received an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule. The confirmation rule document informs the public of the effective date of the rule.

(d) *Withdrawal of a direct final rule.* (1) If the NTSB receives an adverse comment or a notice of intent to file an adverse comment within the comment period, it will publish a rule document in the Federal Register, before the effective date of the direct final rule, advising the public and withdrawing the direct final rule.

(2) If the NTSB withdraws a direct final rule because of an adverse comment, the NTSB may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

§ 800.45 Interim rulemaking procedures.

(a) An interim rule may be issued when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. For example, an interim rule may be issued in instances when normal procedures for notice and comment prior to issuing an effective rule are not required, minor changes to the final rule may be necessary after the interim rule has been in place for some time, or the interim rule only implements portions of a proposed rule, while other portions of the proposed rule are still under development.

(b) An interim rule will be published in the Federal Register with an effective date on or after the date of publication. After the effective date, an interim rule is enforceable and is codified in the next annual revision of the Code of Federal Regulations.

Christopher A. Hart,
Chairman.

